

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1536.00
COMPLAINT INVESTIGATOR: Steve Starbuck
DATE OF COMPLAINT: February 24, 2000
DATE OF REPORT: March 23, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 19, 2000

COMPLAINT ISSUES:

Whether the North Harrison Community School Corporation and the Harrison County Special Education Cooperative violated:

- 511 IAC 7-15-1 with regard to the school's alleged failure to follow procedures when suspending a student with a disability.
- 511 IAC 7-6-2(c) with regard to the school's alleged failure to utilize an appropriately licensed teacher to instruct a student with a learning disability.
- 511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written, specifically, failing to provide the student with a calculator.
- 511 IAC 7-12-1(c) with regard to the school's alleged failure to schedule a case conference committee (CCC) meeting at a mutually agreed upon time.
- 511 IAC 7-12-1(l) with regard to the school's alleged failure to have an IEP for the student that is not more than twelve months old.

During the course of the investigation, additional issues were identified, which are:

- 511 IAC 7-12-1(e) with regard to the school's alleged failure to include in the CCC meeting a representative of the public agency who is qualified to provide or supervise the provision of special education and who has the authority to commit public agency resources.
- 511 IAC 7-12-1(g)(3) with regard to the school's alleged failure to convene a CCC meeting at the request of the parents to determine whether a relationship exists regarding the student's behavior management issues and his disability.
- 511 IAC 7-10-3(j) and (k) with regard to the school's alleged failure to conduct an independent educational evaluation at the request of the parents.

FINDINGS OF FACT:

1. The student is a fifteen year old, ninth grade student, who has been determined eligible for special education and related services due to a learning disability.

2. During the 1999-2000 school year the student has been suspended for nine instructional days. The student was suspended for five consecutive instructional days from December 15, 1999, through December 21, 1999, for repeated insubordination. On February 8, 2000, the student was suspended for four consecutive instructional days due to the intimidation of another student and for "talking back" to the assistant principal. The student has not been suspended for more than five consecutive instructional days, and has not been suspended for more than ten cumulative instructional days in a school year.
3. The student receives instruction in math, reading, life skills, and science in a special education multi-categorical classroom. He receives instruction in agriculture, health, and physical education in a general education classroom. The student's only identified disability is a learning disability. The student's teacher of service is the only teacher that provides the student with special education instruction. The teacher of service has an active teaching license in the area of mental retardation, but is not licensed in the area of learning disabilities.
4. The student's IEP written on February 12, 1999, states the student will use a calculator to solve word problems to help him improve math skills. The plan also states the student shall have access to a calculator for state and/or local competency testing. According to the school principal, on January 20, 2000, the student was denied access to a calculator to complete his classroom assignment by the teacher of service.
5. According to the special services coordinator, the scheduling of CCC meetings at a mutually agreeable time has not been an issue until attempts were made to schedule the last CCC meeting. The parents indicated they would like the most recent CCC meeting to be scheduled at 6:30 p.m. in the evening, so the father could attend the CCC meeting without taking off from work. School staff indicated this would be a hardship as teaching staff were not required to attend such late evening meetings. Although there were some negotiations necessary to arrive at a mutually agreeable time, the school did convene a CCC meeting on March 21, 2000, at 6:00 p.m. The school principal states the meeting was adjourned at 8:30 p.m. in the evening, and that no agreement was reached regarding the student's IEP.
6. The student's last IEP was written on February 12, 1999. CCC meetings were convened on February 22, 2000, and March 21, 2000, to develop a new IEP for the student. A consensus regarding an appropriate educational program for the student was not reached at either meeting.
7. The building principal was in attendance at the last four CCC meetings convened on February 12, 1998, February 12, 1999, February 22, 2000, and March 21, 2000. The special services coordinator states the building principal is qualified to provide or supervise the provision of special education services and has the authority to commit public agency resources.
8. In letters to the local director of special education dated February 7, 2000, and February 22, 2000, the parents requested that a CCC meeting be scheduled to discuss the relationship between the student's behavior and his disability. A CCC meeting had been scheduled for February 4, 2000, however, the parent called the school on February 2, 2000, and canceled the CCC meeting. On February 14, 2000, a notice was mailed to the parents that an annual case review meeting had been scheduled for February 22, 2000, to discuss the thirty-six month educational evaluation and the relationship between the student's behavior and his disability. This CCC meeting was convened, but no consensus was reached among the CCC members concerning the student's IEP and the relationship between the student's behavior and his disability.
9. A thirty-six month psychological, educational, and vocational evaluation was completed by the school on February 2, 2000. In a letter to the local director of special education dated February 22,

2000, the parents requested that an independent educational evaluation be completed for the student. The school is of the opinion that the recent evaluation is valid, and at this time, the parents have not pursued an independent evaluation. There is no documentation to indicate that the school has responded to the parents request for an independent evaluation or that the school has explained to the parents their right to obtain an independent evaluation without the approval of the school. The school has not initiated a due process hearing to show its educational evaluation is appropriate.

CONCLUSIONS:

1. Finding of Fact #2 reflects that the school followed the appropriate procedures for suspending a student with a disability from school. Therefore, no violation of 511 IAC 7-15-1 is found.
2. Finding of Fact #3 indicates that the school has failed to utilize an appropriately licensed teacher to instruct the student with a learning disability. Therefore, a violation of 511 IAC 7-6-2(c) is found.
3. Finding of Fact #4 reflects that the school failed to allow the student to use a calculator as specified in the IEP of February 12, 1999. Therefore a violation of 511 IAC 7-12-1 is found.
4. Finding of Fact #5 indicates the school has scheduled CCC meetings at mutually agreeable times. Therefore, no violation of 511 IAC 7-12-1(c) is found.
5. Finding of Fact #6 reflects that the student's IEP is more than twelve months old. Therefore, a violation of 511 IAC 7-12-1(l) is found.
6. Finding of Fact #7 indicates the building principal, who has the authority to commit public agency resources, attended the last four CCC meetings. Therefore, no violation of 511 IAC 7-12-1(e) is found.
7. Finding of Fact #8 reflects that attempts have been made to convene a CCC meeting to determine whether a relationship exists regarding the student's behavior and his disability. Therefore, no violation of 511 IAC 7-12-1(g)(3) is found.
8. Finding of Fact #9 indicates the school failed to respond to the parent's request for an independent evaluation, and has not initiated a due process hearing to show its educational evaluation is appropriate. Therefore, violations of 511 IAC 7-10-3(j) and (k) are found.

The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The North Harrison Community School Corporation and the Harrison County Special Education Cooperative shall:

1. Reconvene a CCC meeting to develop an appropriate IEP, determine the need for compensatory services, address the issue of completing an independent evaluation, and determine if a relationship exists between the student's behavior and his disability. If the school and the parents cannot reach agreement concerning these issues, the school shall pursue mediation (if the parents agree) or initiate a due process hearing no later than April 24, 2000. If a consensus can be reached by the CCC, a copy of the IEP and the CCC Summary Report shall be submitted to the Division no later

than April 24, 2000.

2. Submit a plan to the Division no later than April 24, 2000, that explains how the student will receive educational instruction from an appropriately licensed teacher. The school will need to review the credentials of other teachers and related services personnel to determine if all staff are appropriately licensed or certified to provide the services for which the individual is employed as specified in 511 IAC 7-6-2(c). Submit an assurance statement to the Division no later than April 24, 2000, that this has been completed, and include in the statement that all caseload assignments for special education staff have been reviewed and have been determined appropriate.
3. Submit an assurance statement to the Division no later than April 24, 2000, that the student shall be permitted to use a calculator for math assignments and competency testing as specified in the IEP dated February 12, 1999.
4. In-service all appropriate staff regarding the requirements as specified in 511 IAC 7-6-2(c), 511 IAC 7-12-1 (in regards to accommodations listed in IEPs), 511 IAC 7-12-1(l), and 511 IAC 7-10-3(j) and (k). Submit documentation to the Division that this has been completed no later than April 24, 2000. The documentation should include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.